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POLICY ISSUE

(Notation Vote)

May 30, 2024

SECY-24-0046

FOR: The Commissioners

FROM: Raymond V. Furstenau
Acting Executive Director for Operations

SUBJECT: IMPLEMENTATION OF THE FISCAL RESPONSIBILITY ACT OF 2023
NATIONAL ENVIRONMENTAL POLICY ACT AMENDMENTS

PURPOSE:

This paper provides the staff's review of the amendments to the National Environmental Policy Act of 1969 (NEPA) in section 321 of the Fiscal Responsibility Act of 2023 (FRA) and recommendations for future actions to enhance the U.S. Nuclear Regulatory Commission's (NRC's) NEPA implementing procedures. The NRC is in compliance with the requirements of the NEPA amendments, which took effect immediately upon the FRA's enactment. Nevertheless, in accordance with the Principles of Good Regulation, the staff has identified opportunities to enhance clarity, reliability, efficiency, and transparency in NRC's regulations and procedures, as well as to streamline environmental reviews while balancing meaningful public engagement. Accordingly, the staff is providing the Commission with recommendations on options to revise the NRC's implementing regulations in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions" and update NRC guidance and policies. Given that several of the recommendations involve rulemaking, this paper includes a rulemaking plan that consolidates such recommendations.

Enclosure 8 and enclosure 9 transmitted herewith contain Official Use Only—Sensitive Internal Information. When separated from enclosure 8 and enclosure 9, this transmittal document is decontrolled.

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SUMMARY:

On June 3, 2023, President Biden signed into law the FRA, which includes amendments to NEPA. The staff has conducted a detailed analysis of the NEPA amendments and how they might affect the agency's environmental review process for regulatory and licensing actions. The new amendments became immediately applicable to the NRC (and other agencies subject to NEPA) upon the FRA's enactment. The staff has taken actions to ensure compliance with the NEPA amendments.

To enhance clarity and reliability in NRC's implementing regulations and to consider opportunities to improve the efficiency and effectiveness of environmental reviews in light of the NEPA amendments, the staff has identified, and discusses in the accompanying enclosures, six high-level policy topics (referred to as Topic 1-6 and described in enclosures 1-6).

The staff recommends addressing Topic 1, 2, and 3 (described in enclosures 1, 2, and 3) through rulemaking. For Topic 4, the staff recommends development of a new Commission policy statement (enclosure 4). The staff recommends addressing Topic 5 through guidance without rulemaking (enclosure 5). For Topic 6 (enclosure 6), staff recommends considering additional options for enhancing efficiency in the regulatory basis phase of the rulemaking process to determine whether these issues should be resolved through guidance or rulemaking. The staff describes the recommendations that could involve rulemaking in a single rulemaking plan (enclosure 7). For each of the topics, the staff includes a description of completed actions and any actions planned for the interim period until any Commission-directed actions are completed. The staff recommends including in the recommended rulemaking several changes to address NEPA amendments that are administrative in nature. Due to the recommended scope of the rulemaking and anticipated stakeholder interest, the staff recommends initiating the rulemaking process with development of a regulatory basis that would be issued for public comment. This step would afford stakeholder engagement early in the rulemaking process and provide the staff an opportunity to consider the comments received on the regulatory basis through a structured and inclusive decisionmaking process.

BACKGROUND:

The NEPA process is intended to ensure that decisionmakers consider potentially significant environmental impacts of proposed Federal actions and to inform the public that the agency has indeed considered environmental concerns in its decisionmaking. The staff documents its environmental reviews in the form of environmental impact statements (EISs), environmental assessments (EAs), and categorical exclusion determinations in accordance with 10 CFR Part 51.¹

Several of the NEPA amendments enacted by the FRA codify longstanding principles drawn from the CEQ's regulations and agency practice and add improvements to the efficiency and effectiveness of the NEPA process consistent with NEPA's purposes. Since 2021, the CEQ has been engaged in a multistage effort to revise and update its Governmentwide NEPA

¹ The regulations of the White House's Council on Environmental Quality (CEQ) (Title 40 of the Code of Federal Regulations (CFR) 1500–1508) generally apply to all Federal agencies and instruct agencies regarding compliance with the procedural requirements of NEPA. As an independent regulatory agency, the NRC voluntarily takes into account the CEQ regulations as a matter of policy (10 CFR 51.10(a)) where the regulations are consistent with the NRC's other statutory requirements and implements NEPA section 102(2) through its regulations in 10 CFR Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions."

implementing regulations. The CEQ's Phase 2 final rule published on May 1, 2024,² incorporates revisions to address the FRA amendments and provides additional details regarding the CEQ's interpretation and implementation of the new requirements. If the Commission approves the recommended rulemaking, either in part or its entirety, the staff will consider the CEQ's rulemakings^{2,3,4} during the NRC's rulemaking process. While the staff's review of the CEQ Phase 2 final rule finds that there are no substantive conflicts with this paper, the staff is not yet prepared to make recommendations on the more detailed procedural revisions in CEQ's Phase 2 final rule that go beyond the FRA amendments. The staff recommends incorporating consideration of CEQ's revised NEPA implementing procedures in the development of a regulatory basis for the recommended rulemaking to allow for more stakeholder interaction on how CEQ's revisions should apply to the NRC's processes.

The new NEPA amendments became immediately applicable to the NRC (and other agencies subject to NEPA) upon the FRA's enactment. Therefore, the staff has taken specific actions to implement the immediately effective requirements of the FRA's NEPA amendments and engaging external stakeholders (e.g., through preapplication meetings) as needed.

DISCUSSION:

The staff conducted a detailed assessment of each revised or new NEPA provision to determine how the new requirements affect the NRC. If a new requirement could affect the NRC's environmental reviews, the staff assessed whether the new requirement affects regulations (10 CFR Part 51), guidance, processes, or policy and determined whether additional regulatory, rulemaking, or other action could be used to effectively conform the NRC's processes and environmental reviews to the new requirements. The staff assessed whether needed actions involve a policy issue for Commission consideration or whether actions and changes are in accordance with existing policies and may be done under the staff's existing authority. This paper presents options and recommendations to address the new NEPA amendments that involve a policy issue for Commission consideration.

The staff chose to organize the information in six high-level policy topics:

1. Topic 1: Proposed Agency Action and Reasonable Range of Alternatives
2. Topic 2: Procedure for Determination of Level of Review
3. Topic 3: Project Sponsor Preparation of Environmental Documents
4. Topic 4: Lead, Participating, and Cooperating Agencies (Federal, State, Tribal and Local)
5. Topic 5: Programmatic Environmental Documents
6. Topic 6: Additional Recommendations to Streamline and Enhance Efficiency

Enclosures 1–6 provide the detailed analyses for each topic, while the amendment, analysis, and staff recommendation for each topic are summarized below. The enclosures also discuss

² See CEQ, "National Environmental Policy Act Implementing Regulations Revisions Phase 2, Final Rule" (89 FR 35442; May 1, 2024).

³ See CEQ, "National Environmental Policy Act Implementing Regulations Revisions, Final Rule" (87 FR 23453; April 20, 2022).

⁴ See CEQ, "Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, Final Rule" (85 FR 43304; July 16, 2020).

other options that were considered but not recommended by the staff. Figure 1 summarizes these topics, the associated options, and staff recommendations (outlined in orange).

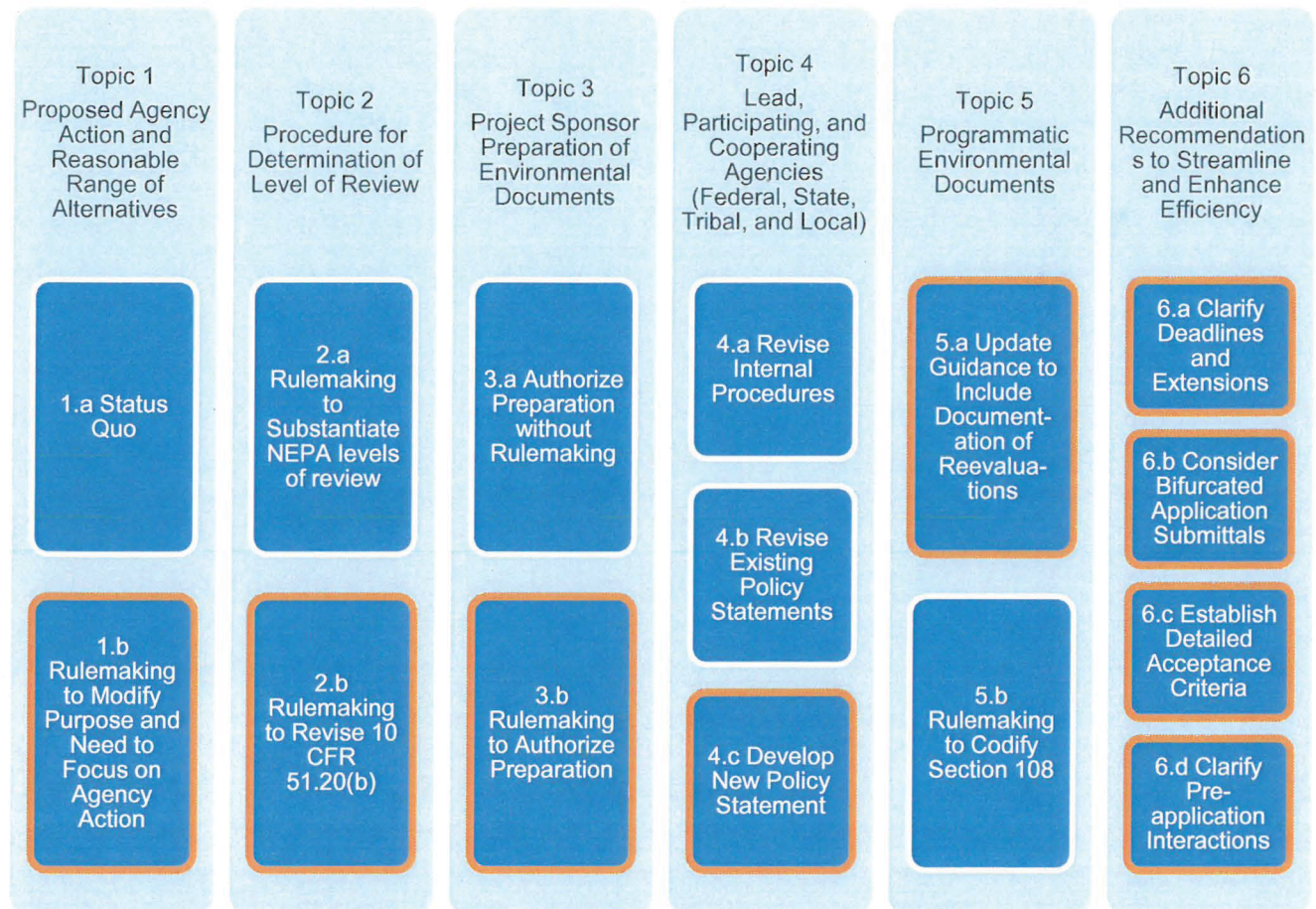


Figure 1. Topics and Options Considered

Topic 1: Proposed Agency Action and Reasonable Range of Alternatives

Enclosure 1 contains a detailed analysis, including options, supporting analysis, and the staff's recommendation for this topic.

NEPA Amendments

The FRA added the word "agency" to the phrase "proposed action" everywhere the phrase previously occurred, as well as most uses in the new NEPA provisions in sections 106 through 111 (a total of 26 instances in the statute).⁵ The FRA also added the words "reasonable range of" to "alternatives to the proposed agency action," in section 102(2)(C)(iii) and requires "an analysis of any negative environmental impacts of not implementing the proposed agency action in the case of a no action alternative...." In addition, the FRA added the word "Federal" before

⁵ In the four locations where "proposed action" action is used rather than "proposed agency action" (sections 106(a)(4), 109(1) and (3), and 111(12)), it is clear from context that the action is an agency action. For example, section 106(a)(4) first uses the term "proposed agency action" then refers to the agency taking "the proposed action" later in the same sentence.

“resources” in section 102(2)(C)(v). These provisions apply to ongoing agency actions under NEPA and became immediately applicable to the NRC upon enactment of the FRA.

Staff Actions for Compliance

The staff is proceeding with site-specific reviews under existing NRC regulations implementing NEPA and existing guidance in addition to implementing the following additional actions to ensure compliance with NEPA. The staff is ensuring the analysis of the no-action alternative discusses reasonably foreseeable negative environmental impacts, per NEPA section 102(2)(C)(iii). Staff is ensuring that all findings of no significant impact include statements of “purpose and need,” per NEPA section 107(d) (such statements are already included in all EAs and EISs). Staff is not taking action to address the insertion of “reasonably foreseeable” because the staff already applies this standard. In response to the insertion of the word “Federal” before “resources” in section 102(2)(C)(v)), staff plan to limit the discussion of irreversible and irretrievable commitments of resources in EISs to Federal resources.⁶

Summary of Analysis and Recommendation

Because the NRC’s proposed agency action is typically limited to a regulatory or licensing decision (e.g., whether or not to issue a license), the scope of the NRC’s NEPA review of a “proposed agency action” (e.g., for reactor licensing) would be limited to only addressing the environmental effects of the proposed agency action and the no action alternative, which would include identifying any negative environmental effects of the no action alternative. Also, the consideration and analysis in environmental reviews of the “irreversible and irretrievable commitments” of resources involved in the proposed agency action would be limited to “Federal” resources. These changes would reduce the scope of analysis in some NRC environmental reviews. Therefore, the staff recommends revising 10 CFR Part 51, as discussed in Option 1.b in enclosure 1, to define the proposed agency action as the regulatory or licensing decision (e.g., whether or not to issue an operating license). This rulemaking would also include conforming revisions as described in enclosures 1 and 7. In addition, the staff would revise relevant NRC NEPA guidance. This option would address the FRA NEPA amendment, improve the NRC’s environmental NEPA review efficiency, and ensure clarity and transparency to the public about the scope of the NRC’s review.

Topic 2: Procedure for Determination of Level of Review

Enclosure 2 contains a detailed analysis, including options, supporting analysis, and the staff’s recommendation for this topic.

NEPA Amendments

The FRA adds a new section 106 to NEPA, which establishes threshold determinations for when an agency is not required to prepare an environmental document for proposed agency actions. Section 106(b) establishes levels of review for when an EA or EIS is required to determine the reasonably foreseeable significant effect of the proposed agency action on the quality of the human environment. It also identifies the sources of information an agency may need to support such a determination. NEPA section 109 establishes requirements allowing agencies to adopt a categorical exclusion prepared by another agency. In addition, NEPA now

⁶ In its Phase 2 final rule, CEQ interprets the phrase “Federal resources” to plainly mean resources owned by the Federal Government or held in trust for Tribal Nations (89 FR 35442, 35507).

defines “categorical exclusion” in section 111(1). These provisions apply to ongoing agency actions under NEPA and became immediately applicable to the NRC upon enactment of the FRA.

Staff Actions for Compliance

The staff is proceeding with site-specific reviews under existing NRC regulations implementing NEPA and existing guidance. The staff will continue to implement the requirements of 51.20, including preparation of EISs for the actions listed in 51.20(b). Exemptions from 51.20(b) will be considered on a case-by-case basis with appropriate communication to the Commission. An example is the recent approach taken in the Kairos Hermes 2 licensing proceeding (SECY-23-0080, “Environmental Review Approach for the Kairos Power, LLC, Hermes 2 Construction Permit Application,” dated September 13, 2023), where the staff began the environmental review for additional reactors at the same site with an EA, rather than an EIS, because an EIS had been prepared for that site within the previous 6 months.

Summary of Analysis and Recommendation

NEPA section 106(b)(2) states that an agency “shall prepare an environmental assessment with respect to a proposed agency action that does not have a reasonably foreseeable significant effect on the quality of the human environment, or if the significance of such effect is unknown, unless the agency finds that the proposed agency action is excluded pursuant to one of the agency’s categorical exclusions, another agency’s categorical exclusions consistent with section 109 of this Act, or another provision of law.”

The NRC has codified a requirement in 10 CFR 51.20(b) to prepare EISs for certain licensing and regulatory actions without consideration of the significance of the environmental impacts before preparation. The staff recommends rulemaking to revise 10 CFR 51.20(a), 10 CFR 51.20(b) and 10 CFR 51.21, “Criteria for and identification of licensing and regulatory actions requiring environmental assessments,” to reflect the new language in NEPA section 106 (Option 2.b in enclosure 2). Specifically, this rulemaking would explore eliminating 10 CFR 51.20(b) to prepare an EIS for specific actions without consideration of the level of effect before preparation, and revise 10 CFR 51.20, “Criteria for and identification of licensing and regulatory actions requiring environmental impact statements,” to reflect NEPA section 106(b). The rulemaking would also consider conforming edits to other sections in 10 CFR Part 51. This recommendation would allow for greater flexibility and would eliminate the need for exemptions to allow the preparation of EAs where an EIS is currently required by NRC regulations.

The NEPA definition of categorical exclusion uses similar terms to the NRC’s definition but adds the term “normally” into the definition: “do[es] not normally have...a significant effect on the human environment.” The recommended rulemaking would include revising the definition of categorical exclusion in 10 CFR 51.14(a) to align with the definition in NEPA section 111(1). The rulemaking also would explore whether any additional actions should be eligible for categorical exclusions under the new definition in NEPA.

Topic 3: Project Sponsor Preparation of Environmental Documents

Enclosure 3 contains a detailed analysis, including options, supporting analysis, and the staff’s recommendation for this topic.

NEPA Amendments

The FRA adds a new section 107 to NEPA. Section 107(c) requires each notice of intent to prepare an EIS to "include a request for public comment on alternatives or impacts and on relevant information, studies, or analyses with respect to the proposed agency action." Section 107(f) requires agencies to "prescribe procedures to allow a project sponsor to prepare an environmental assessment or an environmental impact statement under the supervision of the agency." Agencies shall supervise the preparation of these environmental documents. The agency "shall independently evaluate the environmental document and shall take responsibility for the contents." Section 107(f) additionally allows, but does not require, the lead agency to "provide such sponsor with appropriate guidance and assist in the preparation" of the EA or EIS. Although the new requirement in section 107(f) to issue these procedures took effect immediately upon the FRA's enactment, NEPA does not establish a deadline by which such procedures must be prescribed, and NEPA does not require agencies to begin offering the option for project-sponsor preparation of EAs and EISs in advance of the agency issuing the required procedures.

Staff Actions for Compliance

In response to NEPA section 107(c), staff is ensuring that an opportunity for comment is offered on all notices of intent to prepare an EIS. While NRC's NEPA regulations⁷ do not mandate that the NRC offer a similar comment opportunity, staff's practice has been to offer an opportunity for comment.

NEPA does not establish a deadline by which such procedures must be prescribed. The staff will not take action to prescribe procedures for applicant prepared environmental documents until the agency makes a decision because this topic raises high-level policy issues for applicant involvement in a process the Commission has previously reserved to the NRC.

Summary of Analysis and Recommendation

The NRC does not currently have specific policies and procedures that define how an applicant would submit an EA or EIS that it prepared. Rather, current regulations, past Commission decisions and direction to staff, and staff guidance assume that the staff will prepare environmental documents necessary to ultimately comply with NEPA. NRC regulations already specifically require an applicant for a "permit, license, or other form of permission, or amendment to or renewal of a permit, license or other form of permission, or a petitioner for rulemaking to submit [environmental reports] to the Commission as may be useful in aiding the Commission in complying with section 102(2) of NEPA." Under NRC's current regulatory framework, if an applicant desired to prepare an EA or EIS for its licensing request, the staff would seek Commission approval of a process for an applicant to prepare an EA or EIS (including any necessary exemptions). Therefore, the staff is recommending rulemaking to develop new 10 CFR Part 51 regulations to explicitly allow for applicant preparation of a draft environmental document (EA/EIS) that will serve, under appropriate NRC supervision, as the required NEPA analysis (Option 3.b in enclosure 3). The rulemaking would include consideration of how and when NRC supervision of the applicant's environmental document preparation occurs (e.g., during preapplication and after submittal). Incorporating generic implementing procedures for section 107(f) into Part 51 as part of a rulemaking to address the new NEPA amendments would be consistent with CEQ's approach in its Phase 2 final rule (89 FR 35442, 35574). This recommendation would promote openness, clarity, and reliability.

⁷ See 10 CFR 51.27 (providing that an NRC notice of intent to prepare an EIS "shall," when describing a "proposed scoping process," address "whether written comments will be accepted").

Topic 4: Lead, Participating, and Cooperating Agencies (Federal, State, Tribal, and Local)

Enclosure 4 contains a detailed analysis, including options, supporting analysis, and the staff's recommendation for this topic.

NEPA Amendments

NEPA section 107 addresses timely and unified Federal reviews. It largely codifies existing NRC practice with a few adjustments, including the addition of provisions clarifying lead, joint lead, participating, and cooperating agency designations, and it generally requires development of a single environmental document. NEPA section 111(8) defines a new term, "participating Federal agency." NEPA section 102(2) requires that the "head of the lead agency shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise...." These provisions apply to ongoing agency actions under NEPA and became immediately applicable to the NRC upon enactment of the FRA.

Staff Actions for Compliance

The staff is reviewing Memoranda of Understanding currently under development for compliance with the new FRA NEPA amendments related to interagency coordination in multiagency NEPA reviews. The staff would not begin revision of internal procedures or guidance until Commission direction is received.

Summary of Analysis and Recommendation

The FRA makes it clear that a cooperating agency can be a "Federal, State, Tribal, or local agency" and does not differentiate between eligibility requirements for Federal agencies as opposed to non-Federal agencies. The FRA also introduces a new term "participating Federal agency," which is not currently defined in NRC regulations or guidance.

Under the NEPA amendments, lead agencies have the following responsibilities relating to cooperating agencies, which are not specifically identified in 10 CFR Part 51:

- NEPA section 107(a)(2)(B) requires that lead agencies "request the participation of each cooperating agency at the earliest practicable time."
- NEPA section 107(a)(2)(C) requires that lead agencies "give consideration to any analysis or proposal created by a cooperating agency."
- NEPA section 107(a)(2)(D) requires that lead agencies consult with cooperating agencies in the development of a schedule to carry out the proposed agency action.
- NEPA section 107(a)(2)(F) requires that lead agencies "meet with a cooperating agency that requests such a meeting."
- NEPA section 107(a)(3) allows cooperating agencies to submit comments to the lead agency (dependent on a schedule established by the lead agency).

The staff recommends development of a new policy statement to outline expectations around lead, cooperating, and participating agencies (Option 4.c in enclosure 4). The policy statement could be developed with the rulemaking for efficiency. The policy statement would promote

independence, openness, clarity, and reliability by setting clear expectations for roles and responsibilities and agency interactions. In addition, as part of the recommended rulemaking, the staff would plan to update the definition of cooperating agency in 10 CFR 51.14, "Definitions," add definitions of lead and participating agencies, and make other conforming edits to remove the differences between Federal, State, Tribal, and local cooperating agency eligibility requirements (enclosure 7).

Topic 5: Programmatic Environmental Documents

Enclosure 5 contains a detailed analysis, including options, supporting analysis, and the staff's recommendation for this topic.

NEPA Amendments

The NEPA amendments include a new section 108, which defines "programmatic environmental documents" and codifies circumstances under which agencies may rely on programmatic environmental documents. Within 5 years of publication of a programmatic environmental document, the agency may rely on the analysis included in that document in a subsequent environmental document for related actions without additional review, unless there are substantial new circumstances or information about the significance of adverse effects that bear on the analysis. After 5 years, the agency may continue to rely on the analysis so long as the agency reevaluates the analysis in the programmatic environmental document and any underlying assumptions to ensure reliance on the analysis remains valid. NEPA section 111(11) defines a "programmatic environmental document" as "an [EIS] or [EA] analyzing all or some of the environmental effects of a policy, program, plan, or group of related actions." These provisions apply to ongoing agency actions under NEPA and became immediately applicable to the NRC upon enactment of the FRA.

Staff Actions for Compliance

The staff will continue its practice of reviewing available information, including new and significant information reviews, when relying on previous environmental information to ensure reliance on the information remains valid. The staff would not begin updating guidance until Commission direction is received.

Summary of Analysis and Recommendation

The staff's review of available information indicates that the NRC's existing reevaluation processes, including new and significant information reviews, are sufficient to meet the requirements in NEPA section 108 regarding reliance on prior environmental reviews. Therefore, the staff recommends that the Commission not direct rulemaking to address NEPA section 108. The staff will update guidance to include documentation of the staff's existing reevaluation processes (Option 5.a in enclosure 5). As such, the staff determined that rulemaking for the NRC's use of programmatic environmental documents and for reevaluation processes is currently unnecessary.

Topic 6: Additional Recommendations to Streamline and Enhance Efficiency

Enclosure 6 contains a detailed analysis, including the staff's supporting analysis and recommendation for this topic.

NEPA Amendments

NEPA section 107(e) requires that EAs be limited to 75 pages and EISs to 150 pages. If the proposed agency action is “of extraordinary complexity,” then the EIS may be up to 300 pages. The FRA NEPA amendments indicate that page limits exclude citations and appendices.

NEPA section 107(g)(1) establishes deadlines for the completion of EISs (2 years) and EAs (1 year), and section 107(g)(2) provides procedures for extending the deadlines, when necessary, in consultation with the applicant. Section 107(g)(3) gives applicants a right to seek enforcement of deadlines in the courts. Section 107(h) requires the head of each agency to annually submit to Congress a report that identifies any EIS or EA that the agency did not complete by the deadline (described in section 107(g)) and explains any failure to meet such deadline.

Staff Actions for Compliance

The staff has taken the following actions for compliance with NEPA the amendments regarding page limits and deadlines.

Page Limits (NEPA section 107(e))

- implementing page limits in environmental documents following the CEQ definition of “page”⁸
- developing staff guidance on page limit requirements and what actions would be “of extraordinary complexity”
- continuing to develop streamlined templates for EISs and EAs and focusing analyses on the most significant environmental issues
- considering additional efforts to reduce page counts, such as moving certain content to EIS appendices or supporting reports
- identifying and applying lessons learned and successes related to reducing document length in future environmental reviews

Completion Deadlines (NEPA section 107(g))

- setting schedules that comply with the NEPA deadlines and consulting with applicants on and notifying external stakeholders of extensions, as needed
- developing procedures to help ensure the timely completion of consultations and interagency coordination when they are conducted in parallel with the staff’s NEPA reviews

⁸ The CEQ’s definition of “page” at 40 CFR 1508.1(v) states that “Page means 500 words and does not include explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information.”

- updating procedures for determining whether supplementation is necessary when the final EA/EIS is completed ahead of the safety review to support meeting the new NEPA deadlines
- updating and developing preapplication procedures for environmental reviews to support meeting the new NEPA deadlines

Summary of Analysis and Recommendation

This is the first time NEPA completion deadlines have been mandated by law. While the NRC's NEPA implementing regulations do not specify deadlines for completing EISs or EAs, the staff already has taken several steps with the goal of enhancing and streamlining environmental reviews to ensure completion in a timely manner (enclosure 6), including developing staff procedures and guidance on these topics. The staff's position is that there is added value in addressing these topics through rulemaking because it will allow staff to engage stakeholders for input on potential options and better explore the connection between these topics and other recommendations in this paper in a holistic approach. Therefore, the staff recommends considering these issues in the regulatory basis phase of the rulemaking. The staff would include discussion with stakeholders of whether this issue should be resolved through guidance or rulemaking; the staff currently anticipates that guidance is likely to be the more appropriate path. The rulemaking would address, but not be limited to, the following areas, described in enclosure 6:

- clarifying deadlines and extensions
- considering bifurcated applications, where the licensee submits the safety part of the application at a different time than the environmental part of the application
- establishing detailed acceptance review criteria to ensure receipt of necessary environmental information
- clarifying opportunities for preapplication engagement to ensure applicants are aware of all data needs before submitting an application

This rulemaking would include consideration of compliance with other environmental statutes (e.g., National Historic Preservation Act, Endangered Species Act) that usually are completed as part of or in parallel with the NEPA process, including acceptance review criteria with respect to information that is critical for complying with other statutes. The rulemaking process would afford the NRC the opportunity to solicit stakeholder feedback on this issue.

In addition, the recommended rulemaking (enclosure 7) would include consideration of conforming edits (e.g., including the language from NEPA section 107(g) on deadlines into 10 CFR Part 51 regulations) for consistency with NEPA amendments.

COMMITMENTS:

There are no additional commitments resulting from this paper.

RECOMMENDATIONS:

The staff recommends that the Commission approve the following:

- Option 1.b, Rulemaking to Modify Purpose and Need to Focus on Agency Action
- Option 2.b, Rulemaking to Revise 10 CFR 51.20(b)
- Option 3.b, Rulemaking to Authorize Project Sponsor Preparation
- Option 4.c, New Policy Statement
- Option 5.a, Update Guidance to Include Documentation of Reevaluations Without Rulemaking
- Recommendation 6, Consider Rulemaking to Streamline and Enhance Efficiency that would address, but not be limited to, the following:
 - Deadlines and Extensions
 - Bifurcated Application Submittals
 - Detailed Acceptance Criteria for Environmental Information
 - Opportunities for Preapplication Interactions

The staff would initiate one rulemaking to implement the Commission's direction on all the options; concurrently, the staff would develop the recommended new policy statement for publication with the proposed rule. The rulemaking plan in enclosure 7 includes these recommendations that involve rulemaking and includes recommended administrative changes to ensure that the NRC's NEPA implementing regulations remain consistent with NEPA as amended. These administrative changes are recommended regardless of whether the other recommendations are approved by the Commission.

The Office of the General Counsel is preparing a separate paper to address additional, legal considerations related to the new section 106. The staff recommends that the Commission consider these two papers in parallel.

RESOURCE:

Enclosure 8 includes an estimate of the NRC resources needed to implement all the recommendations in this paper.

COORDINATION:

The Office of the General Counsel reviewed this package and has no legal objection.

The Office of the Chief Financial Officer reviewed this package for resource implications and has no objections.

The Office of the Chief Information Officer reviewed this package for Office of Management and Budget clearance and has no objections.

A handwritten signature in dark ink, appearing to read "Raymond V. Furstenau". The signature is fluid and cursive, with the first name "Raymond" and last name "Furstenau" clearly legible.

Raymond V. Furstenau
Acting Executive Director for Operations

Enclosures:

1. Proposed Agency Action and Reasonable Range of Alternatives
2. Procedure for Determination of Level of Review
3. Project Sponsor Preparation of Environmental Documents
4. Lead, Participating, and Cooperating Agencies (Federal, State, Tribal, and Local)
5. Programmatic Environmental Documents
6. Additional Recommendations to Streamline and Enhance Efficiency
7. Rulemaking Plan
8. Estimated Resources (Not Publicly Available)
9. Legal Enclosure (Not Publicly Available)
10. NEPA, as amended by the FRA (redline strikeout)

SUBJECT: IMPLEMENTATION OF THE FISCAL RESPONSIBILITY ACT OF 2023 NATIONAL ENVIRONMENTAL POLICY ACT AMENDMENTS. DATED MAY 30, 2024

**ADAMS Accession Number: ML24078A010 Package Number: ML24078A013
SRM-OGC230810-1**

OFFICE	NMSS/REFS/PM	NMSS/REFS/BC	NMSS/REFS/D	NMSS/DFM/D
NAME	LParks	JMoses	CRegan	SHelton
DATE	3/28/2024	3/29/2024	4/5/2024	4/5/2024
OFFICE	NMSS/DUWP/D	NMSS/MSST/D	OGC	OCFO
NAME	JMarshall	KWilliams	SClark	LYee
DATE	4/5/2024	4/5/2024	5/3/2024	5/8/2024
OFFICE	OCIO	NMSS	NRR/DD	OEDO
NAME	DCullison	JLubinski	RTaylor	RFurstenau
DATE	5/9/2024	5/17/2024	5/17/2024	05/30/24

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